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ABSTRACT

The Supreme Court, in the case of "Grove City College v. Bell," ruled that federal regulation and enforcement activities designed to eliminate discrimination based on sex are triggered by indirect federal aid and are program specific. The Court's program-specific conclusion was immediately applied to federal statutory language that limits discrimination against the handicapped. The proposed Civil Rights Act of 1984, introduced to mitigate the effect of the Court's program-specific interpretation in "Grove City," was not passed by the 98th Congress. The effects of the case on administrative enforcement--at least 22 sex discrimination cases under investigation by the Department of Education's Office for Civil Rights--indicate that the Education Department had previously interpreted the scope of its jurisdiction with regard to the investigation of discrimination more broadly than is currently permissible. It can be predicted that the present administration will continue to oppose broad-based institutional coverage for antidiscrimination provisions, that a new civil rights measure will be drafted, and that the Office of Civil Rights will proceed cautiously pending congressional clarification of intent and would reopen closed cases if the Supreme Court's program-specific conclusions were legislatively reversed. (MLF)

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Title IX: Current Judicial, Legislative, and Administrative Activity

Gail Paulus Sorenson

Nearly ten months after the Supreme Court decided the case of *Grove City College v. Bell*,[1] at least three things are clear: federal regulation and enforcement activities designed to eliminate discrimination based on sex are triggered by indirect federal aid and are program specific; the proposed Civil Rights Act of 1984,[2] which was intended to reaffirm broad coverage under civil rights statutes, was not passed by the 98th Congress; and at least twenty-two sex discrimination cases under investigation by the Department of Education's Office for Civil Rights in early 1984 have been dropped for lack of jurisdiction. Looking to the future, it can be predicted with some certainty that the present administration will continue to oppose broad-based institutional coverage for anti-discrimination provisions; that federal legislators will consider a new civil rights measure when the 99th Congress convenes; and that the Office for Civil Rights will proceed cautiously pending congressional clarification of intent and would reopen closed cases if the Supreme Court's program specific conclusions were legislatively reversed.

The Grove City Case

The Supreme Court decision in the *Grove City* case terminated a six-year legal dispute between the department of education and Grove City College, a small, private, liberal arts college in Pennsylvania. Discrimination was not at issue in the case but rather whether or not the receipt of federal grants by the students of Grove City College subjected the college itself to the technical requirement that it file an assurance-of-compliance form. Such a form would signify that the college would not discriminate on the basis of sex in programs or

1. Grove City College v. Bell, 104 S. Ct. 1211 (1984) (multiple references will be limited throughout).

2. H.R. 5490, 98th Cong., 2d Sess. (1984). *See also* S. 2568, 98th Cong., 2d Sess. (1984).

activities (however defined) that received federal financial assistance. The major issue in contention, as far as the litigants were concerned, was whether or not the institution could be said to be a "recipient" of federal assistance (and thus subject to the assurance of compliance provisions) merely because some of its students received federal grants to aid them in obtaining a college education.[3]

In deciding the major issue, all members of the Court rejected the distinction between direct and indirect aid sought by Grove City College and concluded that federal law did not suggest that

> Congress elevated form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance. There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation.[4]

This conclusion was derived from title IX's "all inclusive" language, which on its face was not limited to direct institutional aid;[5] from the fact that the economic effect of direct and indirect assistance often is indistinguishable;[6] from the fact that student financial assistance was intended by Congress to aid educational institutions themselves;[7] and from an analysis of the legislative history and subsequent treatment of title IX by Congress.[8] The result, which clearly subjects recipients of indirect aid to at least limited federal regulatory authority, has potentially far-reaching consequences that appear to be only dimly perceived at the present time.

On another issue, and despite the fact that by the time the *Grove City* case reached the Supreme Court, both the department of education and Grove City College were of the opinion that federal regulatory authority reached only the particular programs or activities receiving assistance, the Court proceeded to examine whether or not the scope of coverage (and by implication enforcement) extended to the institution as a whole or only to Grove City's financial aid program. Justice Stevens, in a concurring and dissenting opinion, declined to consider this issue, believing that to do so would be to

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3. Student loans that are only *guaranteed* by the federal government are specifically exempted from Title IX coverage. Grove City College v. Bell, 687 F.2d 684, 690, n.10 (3d Cir. 1982).
4. Grove City, 104 S. Ct. at 1217 (citations omitted).
5. *Id.* at 1217.
6. *Id.*
7. *Id.* at 1218.
8. *Id.* at 1219.

render an advisory opinion "predicated on speculation rather than evidence."[9]

In a conclusion surprisingly inconsistent with the Court's previous rejection of the direct/indirect dichotomy vis-a-vis the recipient status of the college, a majority concluded that "the fact that federal funds eventually reach the college's general operating budget cannot subject Grove City to institution-wide coverage."[10] With little indication of how congressional intent was determined, the Court stated that it had "found no persuasive evidence suggesting that Congress intended that ... regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity."[11]

The Supreme Court's opinion in *Grove City*, which has been called "grotesque" by one scholar[12] and "absurd" by Justices Brennan and Marshall,[13] appears, at best, to be internally irreconsilable. For those who have become accustomed to the Court's reasoning in establishment clause cases, that aid given to students cannot be said impermissibly to aid sectarian institutions,[14] it would not have appeared unusual if the Court had simply ruled that Grove City did not receive federal funds within the meaning of title IX. Supporting justification for such a conclusion would have been consistent with that needed to justify the subsequent program-specific interpretation, and the resulting harmonious judgment would have been no more controversial than the one actually reached, which seems to have satisfied no one (with the possible exception of the department of education). Grove City College is justifiably concerned that such indirect forms of federal financial assistance would subject it to administrative burdens that are inconsistent with its educational philosophy and mission. On the other hand, there is substantial congressional support for going beyond the Court's holding by legislatively asserting that the non-discrimination provisions of title IX were intended to apply institution-wide. Among scholars and the general public, there are those who are ready to embrace the above dissatisfactions but few who applaud the Court's decision.

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9. *Id.* at 1225 (Stevens, J., concurring and dissenting).
10. *Id.* at 1221.
11. *Id.* at 1222.
12. Valente, *Title IX, Grove City College, and the Art of the Grotesque*, 17 West's Educ. L. Rptr. 1, 7 (1984).
13. Grove City, 104 S. Ct. at 1236 (Brennan, J., concurring and dissenting).
14. *See, e.g.*, Everson v. Board of Educ., 330 U.S. 1 (1947); Board of Educ. v. Allen, 292 U.S. 236 (1968); Wolman v. Walter, 433 U.S. 229 (1977); Mueller v. Allen, 103 S. Ct. 3062 (1983).

Judicial and Legislative Effects of the Grove City Case

The most immediate effect of the Supreme Court's program-specific conclusion was that it was applied, the same day that *Grove City* was decided, to federal statutory language that limits discrimination against the handicapped.[15] Citing the *Grove City* case, the Court stated that "Section 504 [of the Rehabilitation Act of 1973], by its terms, prohibits discrimination only by a 'program or activity receiving Federal financial assistance.' Clearly, this language limits the ban on discrimination to the specific program that receives federal funds."[16]

Harry M. Singleton, the Department of Education's Assistant Secretary for Civil Rights, informed the ten regional civil rights directors that "there is no doubt that the Court's decision [in *Grove City*] is applicable to OCR's other statutory authorities which include the phrase 'program or activity receiving Federal financial assistance' .... [T]he *Grove City* decision applies to the jurisdictional scope of Title VI, Section 504, and the Age Discrimination Act, as well as Title IX."[17] Therefore, *Grove City's* effects extend to actual or potential discrimination on the basis of "race, color, or national origin" under title VI,[18] to discrimination against "otherwise qualified handicapped individuals" under section 504,[19] to discrimination on the basis of age under the Age Discrimination Act of 1975,[20] and to sex discrimination — "a quadruple play against civil rights," as Senator Edward M. Kennedy called it.[21] It was this extended effect on all statutes patterned after title VI (1964) that was widely predicted and that no doubt led to immediate congressional efforts to mitigate the effect of the Court's program-specific interpretation in *Grove City.*

The proposed Civil Rights Act of 1984 was introduced in the House of Representatives on April 12, 1984, by seventy-two House members (with additional initial sponsorship from 107 members of Congress)[22] and was referred jointly to the Committees on Education and Labor and the Judiciary. A little more than two months later, the bill was

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15. Consolidated Rail Corp. v. Darrone, 104 S. Ct. 1248 (1984).
16. *Id.* at 1255.
17. H. Singleton, Analysis of the Decision in *Grove City College* v. *Bell* and Initial Guidance on its Application to OCR Enforcement Activities 6 (July 31, 1984) (available from the Office for Civil Rights, Department of Education).
18. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982).
19. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1982).
20. Age Discrimination act of 1975, 42 U.S.C. § 1601 (1982).
21. Quoted in Educ. Daily, Apr. 13, 1984, at 2.
22. H.R. 5490, 98th Cong., 2d Sess. (1984).

passed by the House, by a vote of 375-32[23] and was immediately referred to the Senate for action. Although an identical Senate bill (S. 2568)[24] had 56 Senate supporters, it never reached the floor. Principal opposition to the measure came from Senator Orrin G. Hatch of Utah, who chaired the Senate Labor and Human Resources Committee to which the Senate version had been referred.

Despite widespread support for the House-passed civil rights bill, it remained controversial throughout the second session of Congress, and was ultimately withdrawn in the Senate on October 2, 1984, shortly before the 98th Congress adjourned.[25] Senator Edward M. Kennedy of Massachusetts who, along with Senator Robert Packwood of Oregon, had strongly supported the civil rights initiative, was reported to have chastised the Senate after the civil rights bill was withdrawn fron consideration: "Shame on the Senate. Shame on the Senate. We are being asked to sweep under the rug a basic and fundamental issue: whether Federal taxpayers' funds should be used by programs that discriminate against the handicapped, minorities and the aged."[26] And despite Senator Packwood's promise to reintroduce the legislation in the next session of Congress, it was the opinion of Senator Daniel Patrick Moynihan that "[t]his bill will not pass while the present majority of this chamber is in place. We have learned to the shock of this country that we do not have a majority for the Civil Rights Act of 1964."[27]

The provisions of H.R. 5490, the proposed Civil Rights Act of 1984, are worth considering in some detail in order to clarify what the act sought to legislate and to identify the major sources of controversy. The purpose of the legislation, according to House committee reports, was "to reaffirm pre-Grove City College judicial and executive branch interpretations and enforcement practices which provided for broad coverage of [the] . . . antidiscrimination provisions."[28] It would have amended the four major civil rights statutes affected by the *Grove City* case by deleting the "program or activity" language of each statute and adding the term "recipient." Thus, title IX would have read, for example: "No person in the United States shall, on the basis of sex, be excluded from participation, be denied benefits, or be

23. Cohodas, *Groups Push for Senate Action on Civil Rights Legislation*, 42 Cong. Q. Weekly Rpt. 2187 (1984).

24. S. 2568, 98th Cong., 2d Sess. (1984).

25. For an interesting account of attempts to pass the measure in the Senate by attaching it to a general appropriations bill, and subsequent attempts to defeat the bill by attaching controversial amendments on busing, gun control, and tuition tax credits, see articles by Nadine Cohodas in 42 Cong. Q. Weekly Rpt, at 2430-2433 (1984).

26. New York Times, Oct. 3, 1984, at A1, col. 3.

27. *Id.* at A20, col. 3.

28. H.R. Rpt. 98-892, Parts 1 & 2, 98th Cong., 2d Sess. (1984).

subjected to discrimination by any education recipient of Federal financial assistance .... "[29]

A second change would have been the addition of the following definition of "recipient":

> For the purpose of this title, the term "recipient" means — (A) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and (B) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit, to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.[30]

The final major change would have deleted the word "program" while simultaneously retaining the "pinpointing" concept of the fund termination provisions. Fund termination thus would have been "limited to the particular political entity, or part thereof, or other recipient" determined to be in non-compliance and would have been "limited in its effect to the particular assistance which supports such noncompliance so found .... "[31]

Although it is clear from the above pinpointing language that the measure was not intended to allow for institution-wide fund terminations when noncompliance by a recipient or part thereof was documented, critics were concerned about the word "supports." It could be argued that a federally funded financial aid program, for example, supports discrimination in other college programs, i.e., that it has "economic ripple effects." Indeed, the Supreme Court, in *Grove City*, said that "[m]ost federal educational assistance has economic ripple effects throughout the aided institution, and it would be difficult, if not impossible, to determine which programs or activities derive such indirect benefits."[32] Just as the Court rejected this indirect ripple effect, so did the opponents of the 1984 civil rights measures.

The Department of Justice's Assistant Attorney General, William Bradford Reynolds, criticized the fund termination provisions of the

29. *Id.* at 40.
30. *Id.* at 30.
31. *Id.* at 41.
32. Grove City, 104 S. Ct. at 1211.

proposed legislation for failure to define adequately the term "supports." It was his belief that the term was sufficiently ambiguous to allow fund terminations in programs that were not discriminatory but which served as a conduit for providing indirect assistance to a discriminatory program.[33]

It seems apparent from congressional documents that this was, indeed, the intent of proposed funding provisions, but that such an intent was *not* considered to have been a change from prior practice and that support would have to be proven in each case — resulting in fund terminations affecting some non-funded programs but not others.[34] Members of the House committees who considered the civil rights bill argued that enforcement practices had been modeled on the leading case involving fund termination and that there had been no intent to modify prior practices. In *Board of Public Instruction v. Finch*, the Court of Appeals for the Fifth Circuit had said, in 1969, that the termination of federal funding was appropriate only "[i]f the funds provided by the grant are administered in a discriminatory manner, or if they support a program which is infected by a discriminatory environment . . . ."[35]

David Tatel, who headed the Office of Civil Rights from 1977 to 1979, argued that the revised funding termination provision would not inevitably lead to terminations in non-discriminatory funded programs. "[F]ederal funding to an undergraduate program could not be terminated if discrimination were found in a non-funded graduate program, *unless* the government could prove that federal money *actually benefited* the graduate program."[36] However, as previously suggested, the result envisioned by Reynolds could have materialized if discrimination were found in non-funded programs that received indirect support from financial aid monies, for example, that reached the general operating budget — even though no discrimination existed in the financial aid program itself. If funds "supported" programs "infected by a discriminatory environment," they could have been withdrawn. It thus appears that Reynolds' objections to the proposed funding termination provision may have been related as much to anticipated substantive results as to ambiguous language, though supporters continued to assert that results would not be inconsistent with prior practice.

Additional criticism of the proposed legislation was advanced by

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33. N. Cohodas, *Battle Shaping Up in Senate over Rights Bill*, 42 Cong. Q. Weekly Rpt. 1365, 1367 (1984).

34. *See supra* note 28 at 15.

35. 414 F.2d 1068, 1078 (5th Cir. 1969).

36. Testimony of D. Tatel. *See supra* note 33 at 1367 (emphasis added).

Reynolds; Secretary of Education Terrel Bell; and Harry Singleton, Assistant Secretary of Education for Civil Rights, and was aimed at Congress' reassertion of the broad reach of general anti-discrimination provisions.[37] These critics were concerned that the general anti-discrimination provisions of the civil rights measures would be extended far more broadly under the proposed legislation than they had been previously. Typical examples of what Reynolds labeled the "trickle up" theory of coverage included an extension of the non-discrimination principle to all campuses of a multi-campus university when only one campus or individual program received federal aid and a similar extension to all state agencies if one state agency or local agency received funds.[38] Examples of the "trickle down" theory of coverage included a state's receipt of a federal block grant for education extending the non-discrimination principle to all of the state's political subdivisions.[39]

Members of Congress considering the civil rights legislation stated that while such expanded coverage could occur in certain circumstances, it would not be automatic. The "trickle down" theory of coverage elicited the following rebuttal:

> A recipient is covered in its entirety, including its subunits. Political subdivisions (such as cities) are legal entities unto themselves and should not be treated as subunits of their States. Thus, the receipt by a State of federal funds would not necessarily lead to the coverage of all political subdivisions, but it would lead to coverage of all State agencies and departments. A political subdivision must itself receive assistance in order to be covered. This may happen through the direct receipt of federal funds, or through the receipt of federal funds from a State or other recipient, but it is not the automatic result of a State's coverage.[40]

Neither was automatic state coverage to be assumed, under the "trickle up" theory, when a subunit or subdivision received federal funds:

> If a subunit of a State or political subdivision is the recipient,

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37. *See supra* notes 28 & 33. *See also* T.H. Bell, Statement of T.H. Bell, Secretary Department of Education, Before the Committee on the Judiciary, Subcommittee on Constitution, United States Senate Concerning S.2568 — "Civil Rights Act of 1984" (June 5, 1984) (available from the Department of Education).

38. *See generally id.* The "trickle down" theory of coverage under the proposed civil rights measures was put forth by Reynolds, Bell, and Singleton on several occasions.

39. *See, e.g.*, Bell, *supra note* 37 at 3.

40. *Supra note* 28 at 26.

> such as a state department of health or a city fire department, coverage of the parent entity and all of its operations is not automatic. A subunit's receipt of federal financial assistance will trigger coverage for the parent entity of which it is a part, *if* the assistance to the subunit supports the larger entity as well .... So, for example, administrative overhead from federal assistance which a subunit gives to its parent entity will "support" the larger entity and thus lead to coverage.[41]

The general intent of proposed changes related to coverage was to "reaffirm" the broad applicability of the anti-discrimination provisions of the four relevant civil rights statutes — "to clarify that agency and judicial interpretations of this legislation should be guided by the concept of broad rather than narrow application .... "[42]

A more basic criticism of the proposed legislation which, in effect, is a criticism of present legislation as well, as interpreted in the *Grove City* case, is that *indirect* aid to a recipient should not trigger the general anti-discrimination provisions of the civil rights statutes. George Roche, President of Hillsdale College, reflected the position of officials at Grove City College and other institutions when he said that his college would not admit students who received federal education grants. He indicated that signing a required assurance-of-compliance form under the statutes and accompanying regulations is "in effect a blank search warrant authorizing widespread bureaucratic intrusion into our records and decision-making processes, an obligation for Hillsdale to be considered guilty until proven innocent."[43] President Charles S. MacKenzie of Grove City College, an institution that had always believed discrimination to be "morally repugnant," nevertheless felt that the "deeply held ideals of autonomy and self-sufficiency" were threatened by federal intervention and regulation.[44]

While this latter criticism has found support among some members of Congress,[45] it appears that questions related to the breadth of coverage under anti-discrimination provisions and the scope of funding termination provisions are more likely to occupy members of Congress if legislation similar to the Civil Rights Act of 1984 is introduced in 1985.

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41. *Id.*
42. *Id.*
43. *Id.* at 8.
44. N. Cohodas, *Grove City College: Uneasy in the Limelight*, 42 Cong. Q. Weekly Rpt. 1367 (1984).
45. *See, e.g., supra* note 28 at 48.

The Effects of Grove City on Administrative Enforcement

It is apparent from the fact that cases under investigation in 1984 by the Department of Education's Office for Civil Rights were closed, interrupted, or modified so that the jurisdictional scope of the civil rights statutes has been narrowed as a direct result of the Supreme Court's decision in the *Grove City* case. The conclusion follows that the education department had previously interpreted the scope of its jurisdiction with regard to the investigation of discrimination more broadly than is currently permissible.

The first indication of the restricted scope of enforcement activity came with the announcement by the Office for Civil Rights that it had declined to pursue action against the University of Maryland at College Park despite the fact that the office had found sex discrimination in the college athletic program.[46] Shortly thereafter, Secretary of Education Terrel Bell reported that the Department had closed eighteen cases where sex discrimination had been alleged or demonstrated at the collegiate level and four cases at the elementary and secondary school level.[47] Testifying before the House Committees on Education and Labor and the Judiciary, Mary F. Berry, member of the United States Commission on Civil Rights, reported that an additional six compliance reviews had been narrowed, eighteen reviews and five investigations had been interrupted, and nine precollegiate and forty-six collegiate cases were being reviewed.[48] With regard to discrimination on the basis of handicap, Berry reported that five cases and one compliance review had been narrowed and that seven cases were being reviewed: with regard to discrimination on the basis of race, color, or national origin, five cases had been modified.[49] Berry concluded her testimony by stating that "it is absolutely incomprehensible that Federal taxpayers' funds should be used in ways to prevent some of the taxpayers because of their age, race, sex, or solely because of a handicapping condition from having an equal opportunity to use what we all finance."[50]

Although the cases that were dropped dealt with a variety of types of discrimination, those involving potential or actual sex discrimination were related to admissions, student services, student support services,[51] athletics, and employment bias, with the majority related

46. The Chronicle of Higher Educ., Mar. 21, 1984, at 1, col. 4.
47. School L. News, June 1, 1984, at 9.
48. *Supra* note 28 at 7.
49. *Id.*
50. *Id.* at 7-8.
51. *Id.* at 7.

to alleged discrimination in intercollegiate athletic programs.[52] One or more complaints of alleged sex discrimination in athletic programs were reportedly dropped at Auburn University, Centralia College, Duke University, Gonzaga University, Idaho State University, Miami University of Ohio, the College of Southern Idaho, and the University of Washington.[53]

By July 31, 1984, the Assistant Secretary for Civil Rights, Harry M. Singleton, had issued initial guidance on the application of the principles derived from the *Grove City* case to enforcement activities conducted by the Office for Civil Rights (OCR).[54] Regional directors were first advised to "take no action restricting investigations ... when a question remains as to jurisdiction which is not addressed in this memorandum."[55] Deriving guidance from the *Grove City* case, the memorandum treated the issue of whether the federal aid is earmarked or nonearmarked. "If the funding is nonearmarked, jurisdiction may be asserted recipient-wide. If the funding is earmarked, jurisdiction may only be asserted over the program [including all of its activities] of the recipient receiving the earmarked funds .... "[56]

In analyzing various sources of federal aid to pre-collegiate education, OCR has concluded that all programs or activities of a local educational agency (LEA) receiving federal impact aid are subject to the jurisdiction of the OCR.[57] Thus these funds are nonearmarked, unlike funds for vocational education, education of the handicapped, and compensatory education, which are earmarked for specific purposes.[58] OCR jurisdiction, however, will extend to all aspects of these programs regardless of whether federal funding permeates the program. With regard to those LEAs that receive federal block grant appropriations, OCR has determined that there is a "presumption that all of an LEA's programs and activities" will be subject to official scrutiny.[59] Apart from federal impact aid, which is received by relatively few school districts, it appears clear that receipt of block grant funds will trigger broad-based jurisdiction that will extend to all aspects of public education, including those public educational programs that are provided for children attending private institutions as well.

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52. The Chronicle of Higher Educ., June 13, 1984, at 18.
53. *Id.* at 9.
54. *Supra* note 17.
55. *Id.* at 1.
56. *Id.* at 6.
57. *Id.* at 7.
58. *Id.*
59. *Id.* at 8.

The jurisdictional authority of OCR in higher education will be substantially less broad than the corresponding authority at the pre-collegiate level. Student financial assistance, including work study funds, will subject the financial aid office to regulation pursuant to the *Grove City* case; facilities constructed or renovated with federal financial assistance will bring all programs which use the facilities within OCR's jurisdiction; and grants flowing to a particular department or program will subject all activities, including those receiving no federal financial assistance, to the anti-bias provisions of federal law.[60]

The Office of Civil Rights is continuing to assert *institution-wide* jurisdiction when it receives complaints regarding discrimination in admissions and recruitment in federally aided institutions, even when those particular programs do not receive federal funds.[61] This appears to be a curious application of *Grove City* principles. Although it is certainly true that "[o]ne who is discriminated against in seeking admission is denied access to all educational programs and activities within an institution,"[62] which could be said to implicate any program receiving federal financial assistance, it is still an apparently unjustified extension to assert *institution-wide* jurisdiction. That the end result may be logical, on the theory that "the entire body of programs within the school is tainted,"[63] does not make it consistent with the program specific limitation of *Grove City*. The Supreme Court concluded, it will be remembered, that "the receipt of [federal grants] by some of Grove City's students does not trigger institution-wide coverage under [federal law]. In purpose and effect, [federal grants] represent federal financial assistance to the College's own financial aid program, and it is that program that may properly be regulated . . . ."[64] If the *sine qua non* of federal regulation is the receipt of federal dollars, it would appear to be a retreat from *Grove City* to extend jurisdiction beyond those programs that actually receive federal assistance and indirectly engage in discrimination through their "agents" in admissions and recruitment programs. This issue, along with the possible extension of OCR jurisdiction to those college and university programs where work-study students are actually employed, should be closely followed as OCR refines its jurisdictional authority over the next few months.

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60. *Id.* at 9.
61. *Id.*
62. Rice v. President and Fellows of Harvard College, 663 F.2d 336, 339 n.2 (1st Cir. 1981).
63. *Id.*
64. Grove City, 104 S. Ct. 1222.

Conclusion

Charles S. MacKenzie, the president of Grove City College, has argued that the college's present refusal to accept students who receive federal financial assistance was essential to maintain the "autonomy and independence" of the institution.[65] He has expressed his fear that, even with such a drastic step, the college may not be able to disengage itself from federal governmental control and that "any meaningful distinction between private and public education will be lost."[66] While it may be relatively easy to sympathize with MacKenzie, particularly when it is clear that Grove City College has had a long-standing tradition of non-discrimination, one has to wonder if sympathy would extend to an institution that had actually engaged in pervasive discrimination.

Although it is unlikely that federal legislation will seek to reverse the Supreme Court's determination that indirect federal financial assistance will invoke federal regulatory authority, it is certain that there are problems to be resolved before any civil rights legislation clarifying congressional intention with regard to the principle of non-discrimination will pass both houses of Congress. At the moment one can only await further judicial and administrative directives and the promise by House Speaker Thomas P. O'Neill that civil rights legislation patterned after the withdrawn Civil Rights Act of 1984 will be introduced in the 99th Congress — designated H.R. 1, to "symbolize its importance."[67]

65. The Chronicle of Higher Educ., June 6, 1984, at 16.
66. *Id.* at 13.
67. *Id.*, Oct. 10, 1984, at 1.